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Nos. 02-1574 and 02-1624

Supreme Court, U.S.
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In The
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

MICHAEL A. NEWDOW, *et al.*,

Respondents.

ELK GROVE UNIFIED SCHOOL DISTRICT, and DAVID W. GORDON, Superintendent, EGUSD,

Petitioners,

v.

MICHAEL A. NEWDOW,

Respondent.

On Petitions For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF IDAHO GOVERNOR DIRK KEMPTHORNE, UNITED STATES SENATOR LARRY CRAIG, UNITED STATES SENATOR MIKE CRAPO, UNITED STATES REPRESENTATIVE MIKE SIMPSON, UNITED STATES REPRESENTATIVE C.L. "BUTCH" OTTER, PRESIDENT PRO TEMPORE OF THE IDAHO STATE SENATE ROBERT L. GEDDES, AND SPEAKER OF THE IDAHO STATE HOUSE OF REPRESENTATIVES BRUCE NEWCOMB AS AMICI CURIAE IN SUPPORT OF PETITIONS OF THE UNITED STATES AND THE ELK GROVE UNIFIED SCHOOL DISTRICT, *ET AL.*

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QUESTIONS PRESENTED

This case arises from a constitutional challenge to a patriotic activity regularly practiced in California classrooms and sanctioned under the California Education Code. The statute, section 52720, authorizes elementary school children to recite the Pledge of Allegiance to the United States in order to discharge "appropriate patriotic exercises," CAL. EDUC. CODE § 52720 (West 1989), at the beginning of the school day. The Pledge of Allegiance, as it is performed in California and throughout schools across the United States, is an act of Congress describing the United States as "one nation under God." 4 U.S.C. § 4 (1998). These petitions present the Court with an opportunity to reconcile divergent perspectives on this issue by circuit courts of appeal and afford clarity under the law as to the nature and extent the Establishment Clause of the First Amendment accommodates patriotic exercises performed in California and elsewhere. The petitions also raise an important question of national import because the Pledge of Allegiance, as enacted by Congress, is regularly recited by school children throughout the United States under state law similar to the California statute scrutinized in this case.

Amici will address the following questions:

1. Whether the inclusion of the phrase "under God" in the Pledge of Allegiance to the United States Flag violates the Establishment Clause of the First Amendment.

QUESTIONS PRESENTED – Continued

2. Whether a noncustodial parent, who lacks the legal authority to determine his child's education or religious upbringing, has Article III standing to challenge educational practices undertaken by the school in which the custodial parent has chosen to place the child.

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Pursuant to Supreme Court Rule 37, amici curiae Governor Dirk Kempthorne, *et al.*, submit this brief in support of Petitioners United States of America and Elk Grove Unified School District, *et al.*, having obtained the written consent of both petitioners and respondent. The letters of consent have been filed with the Clerk of this court.[1]

IDENTITY OF AMICI CURIAE

Amici curiae are Idaho's chief executive, the state's entire delegation to the United States Congress, and Idaho's State legislative leadership.

Amicus Dirk Kempthorne is the duly-elected Governor of the State of Idaho and is a former United States Senator. As Governor, he is required to "see that the laws are faithfully executed." IDAHO CONST. art. IV, § 5. Idaho has a statutory requirement that the state's schoolchildren learn the Pledge of Allegiance to the flag of the United States. Governor Kempthorne signed that legislation into law on April 17, 2000. *See* H.B. 655, 55th Leg. 2d Sess., 2000 Idaho Sess. Laws 1449 (codified as amended as IDAHO CODE § 33-1602 (Michie 2001)).

[1] Pursuant to Supreme Court Rule 37.6, Amici affirm that no counsel for any party in this case authored this brief in whole or in part and that furthermore, no person or entity has made a monetary contribution specifically for the preparation or submission of this brief.

Amicus United States Senator Larry Craig is the senior member of Congress from the State of Idaho. Senator Craig has been a member of the United States Senate for twelve years and was recently elected to his third consecutive term in November 2002. Prior to becoming a United States Senator, Senator Craig was a member of the United States House of Representatives. He begins his daily legislative business by reciting the Pledge of Allegiance on the Senate floor as well as participating in a prayer led by the Chaplain of the United States Senate.

Amicus Mike Crapo also serves the people of Idaho as a United States Senator. Prior to being elected to the United States Senate, he was a three-term member of the United States House of Representatives. Senator Crapo was elected to Congress after having served as the President Pro Tempore of the Idaho State Senate, a body of the legislative branch of Idaho government that begins each legislative day with a prayer. As with his other colleagues, Senator Crapo begins his legislative day on the floor of the United States Senate with the Pledge of Allegiance.

Amicus United States Representative Mike Simpson is the former Speaker of the Idaho House of Representatives. He served fourteen years as a state legislator and was elected Speaker of the House for three sessions of the Idaho Legislature. As Speaker, he presided over the Idaho House of Representatives in a daily prayer prior to the start of each legislative day of business. In his present position, Congressman Simpson begins his legislative day on the floor of the United States House of Representatives by reciting the Pledge of Allegiance.

Amicus C.L. "Butch" Otter is also a member of the United States House of Representatives from the State of Idaho. Prior to being elected to Congress, Representative Otter was the Lieutenant Governor of Idaho and

performed the duties of acting Governor on numerous occasions. As Lieutenant Governor and President of the Senate for four four-year terms, he presided over a daily prayer in the Idaho State Senate. As a member of the House of Representatives, he also begins his daily legislative business with the Pledge of Allegiance.

Amicus Robert L. Geddes is the President Pro Tempore of the Idaho State Senate. During Idaho's 2000 legislative session, he voted for and supported House Bill 655 which enacted Idaho's citizenship legislation providing for citizenship education—including the Pledge of Allegiance—in Idaho's schools. President Pro Tempore Geddes also supported a change to Senate Rule 4 during the 2003 legislative session which added the Pledge of Allegiance to the second order of business in the Idaho State Senate.

Amicus Bruce Newcomb is the Speaker of the Idaho House of Representatives, a position he has held for three terms. As the Speaker of the Idaho House of Representatives, Idaho's largest legislative body, Speaker Newcomb presides over the daily prayer by the House Chaplain at the start of the legislative day of business. Speaker Newcomb also voted for and strongly supported House Bill 655, Idaho's citizenship education law, during the state's 2000 legislative session.

INTEREST OF AMICI CURIAE

Amici hail from the State of Idaho, a state which requires as a matter of its fundamental constitutional construct that no "preference be given by law to any religious denomination or mode of worship." IDAHO CONST. art. I, § 4. As elected officials of state and federal government, the laws are entrusted to the Amici for their deliberate construction and lawful application.

The Pledge of Allegiance plays an integral part of the citizenship education for children in Idaho public schools. Amici are well familiar with the process by which federal laws are impressed upon on the states, and they understand that the words "under God" in the Pledge represent an important affirmation by Congress that the Framers of the Constitution never designed the United States to be a nation *void* of any acknowledgement of God in our public and free society.

Amici are vitally interested in maintaining the Pledge of Allegiance as an important part of the social and moral fabric of Idaho, a state which is immediately impacted by this case because it falls within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

This case, if it were to stand, will degrade an important observance of Idaho's heritage and culture. This outcome is particularly worrisome because it comes more than two centuries after the birth of a Republic in which its patriarchs freely evoked God in the many writings and organic documents which became the blueprint for the new Nation. Amici can offer a unique perspective on why the decision below should be reviewed as well as why the issues in the case are of the highest importance to the State of Idaho and the United States of America.

SUMMARY OF ARGUMENT

The State of Idaho provides mandatory citizenship and patriotism education in its public schools. By operation of state law, Idaho affords the opportunity for its students to recite the Pledge of Allegiance, sing the National Anthem or "America the Beautiful" in a public

school setting. IDAHO CODE § 33-1602(2) (Michie 2001) (as amended by H.B. 655, 55th Leg. 2d Sess., 2000 Idaho Sess. Laws 1449). The holding in this case has essentially eviscerated key components of Idaho's mandatory patriotism curriculum.

Amici support the petitions for writ of certiorari filed in this case. Additionally, Amici support all of the grounds offered supporting attention to this case by the Court, including the standing of the Respondent to bring this action in the first instance as well as the suggestion by the Petitioners for summary reversal as an appropriate disposition of this matter.

Amici specifically address three separate justifications for certiorari review. First, as clearly articulated by both Petitioners, the decision directly conflicts with a 1992 case from the United States Court of Appeals for the Seventh Circuit, *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Township*, 980 F.2d 437 (7th Cir. 1992), *cert. denied*, 508 U.S. 950 (1993).

Second, state courts that have reviewed similar Establishment Clause challenges under the lens of the First Amendment have accommodated the acknowledgement of God in a public setting, under similar grounds as the Seventh Circuit Court of Appeals did in *Sherman*.

Third, this case presents a federal law question of exceptional importance significantly impacting the States. In addition to Idaho, a considerable majority of the United States have a statutory expression encouraging (and in some instances, *requiring*) public school patriotism education in which the Pledge of Allegiance is an essential element. *See generally*, Appendix. Some states have enacted the complete language of the Pledge of Allegiance

with the words "under God" directly into their statutory infrastructure.

Accordingly, because this case directly conflicts with an existing opinion of the United States Court of Appeals and also presents an extraordinarily important federal law question that should be settled by this Court, review on certiorari is warranted.

REASONS FOR GRANTING THE PETITIONS

I. INTRODUCTION: THE PLEDGE OF ALLEGIANCE AND ITS CRITICAL IMPORTANCE FOR CITIZENSHIP EDUCATION IN THE STATE OF IDAHO

Our Nation's Founding Fathers declared independence from Great Britain by proclaiming to be ever mindful of man's "equal station to which the Laws of Nature and of *Nature's God* entitle them," THE DECLARATION OF INDEPENDENCE (U.S. 1776) (emphasis added), and also professed that one of the self-evident truths is that such men "are endowed *by their Creator* with certain unalienable rights," *id.*, para. 2 (emphasis added).

The Preamble to the Constitution of the State of Idaho declares that "We, the people of the state of Idaho, *grateful to Almighty God* for our freedom, to secure its blessings and promote our common welfare do establish this Constitution." IDAHO CONST. pmbl. (emphasis added). As with the Nation's Founding Fathers, so too did the framers of the Idaho Constitution acknowledge that the process of constructing its essential governmental infrastructure required divine intercession in order to ensure its success.

The California statute reviewed in this case, CAL. EDUC. CODE § 52720 (West 1989), *see* App., *infra*, at 3-4, is a mirror image to an Idaho provision which requires patriotism education in all of the state's elementary and secondary schools. Title 33, section 1602 of the Idaho Code provides in part that:

> (2) Instruction in the proper use, display and history of and respect for the American flag and the national colors *shall be given* in all elementary and secondary schools. Such instruction *shall* include the pledge of allegiance to the flag, the words and music of the national anthem, and of "America."
>
> . . .
>
> (4) Every public school *shall* offer the pledge of allegiance or the national anthem in grades one (1) through twelve (12) at the beginning of each school day.

IDAHO CODE § 33-1602(2), (4) (Michie 2001) (emphasis added). *See* App., at 8-9 (setting forth the complete statute).

However, mindful that the Idaho Constitution prohibits any marginalization of an individual's "right, privilege, or capacity on account of his religious opinions," IDAHO CONST. art. I, § 4, the statute further provides that "No pupil shall be compelled, against the pupil's objections or those of the pupil's parent or guardian, to recite the pledge of allegiance or to sing the national anthem." IDAHO CODE § 33-1602(5) (Michie 2001). *See also W. Va. State Bd. of Educ. v. Barnett*, 319 U.S. 624 (1943) (children may not be compelled to salute the flag and recite the Pledge of Allegiance as a prerequisite to public school attendance).

Thus, even with Idaho's strong public policy that her young people be well-grounded and learned in the Nation's founding principles, that same policy provides an equally strong and appropriate religious and philosophical accommodation to those who may object to having to recite the Pledge of Allegiance or sing the National Anthem.

The practical impact of Idaho's current citizenship curriculum in elementary and secondary schools is that (if they so choose), young people throughout the state begin each day with some acknowledgment of a divine nexus for the creation and protection of our Country. In addition to perhaps reciting "one nation, under God" in the Pledge of Allegiance, some Idaho school children may fulfill their patriotic curriculum requirement under title 33, section 1602 of the Idaho Code by singing the words and music of the National Anthem,[2] or "America the Beautiful."[3]

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[2] The Star Spangled Banner's third verse reads:

> Oh! thus be it ever, when freemen shall stand Between their loved homes and the war's desolation! Blest with victory and peace, may the heaven-rescued land Praise the Power that hath made and preserved us a nation. Then conquer we must, for our cause it is just, And this be our motto: *"In God is our trust"* And the star-spangled banner forever shall wave O'er the land of the free and the home of the brave!

Francis Scott Key, Star Spangled Banner (Sept. 20, 1814) (emphasis added).

[3] The first chorus to "America" is sung, "America! America! *God shed His grace on thee.*" The second chorus is sung, "America! America! *God mend thine every flaw.*" The third chorus is: "America! America! *May God thy gold refine.*" The fourth and final chorus is identical to the first. Katherine Lee Bates, America the Beautiful (1913) (emphasis added).

The consequence of the circuit court's holding in this case is that each of the options expressly afforded in Idaho's classrooms to teachers and students for education in the heritage of the United States has become effectively *eviscerated*.[4]

II. THIS CASE WARRANTS REVIEW ON CERTIORARI

Amici fully support the petitions for writ of certiorari filed with the Court in this case. Amici support all of the grounds offered supporting attention to this case by the Court, including the issue of standing of the Respondent to bring this action in the first instance as

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[4] One irony of the Court's decision is that Idaho school children could now be forced to seek refuge in *religious* schools to recite the Pledge of Allegiance enacted by Congress and receive the State's citizenship curriculum under title 33, section 1602 of the Idaho Code.

However, Idaho school districts are also afforded the opportunity to set forth their particular policies regarding religious practices, as exemplified by the following pronouncement from the Boise City School District:

> The District shall respect the right of each individual to follow his/her own beliefs, as long as the beliefs do not infringe upon the rights of others or disrupt the educational process. Information about various religions may be made available to students as appropriate to the students' grade level and course of study. Any discussion or study of religion or other beliefs shall be offered in a fair and objective manner, consistent with learning objectives and free from sectarian influence.

Independent School District of Boise City, Policies and Administrative Procedures Number 2190 (Rev. Aug. 2001).

well as the suggestion by the Petitioners for summary reversal as an appropriate disposition of this matter.

However, three separate bases for certiorari review are addressed below. First, because the circuit courts of appeals diverge on the precise issue of law presented by this case, the Court's supervisory power should be exercised in this instance and the holdings reconciled. Second, state courts that have reviewed similar Establishment Clause challenges—including one to the Pledge of Allegiance—have relied upon established federal case law and upheld reasonable invocation of God in public settings. Finally, this case presents a federal law question of exceptional importance significantly impacting the states which should be settled by this Court.

A. This Case Directly Conflicts With an Existing Opinion by Another Court of Appeals

As duly noted by Petitioners United States and Elk Grove School District, in an almost identical case decided a decade ago, the Seventh Circuit in *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Township*, 980 F.2d 437 (7th Cir. 1992), *cert. denied*, 508 U.S. 950 (1993), held that the Establishment Clause accommodated a 1979 Illinois statute which required that the Pledge of Allegiance be led by teachers, provided that the students were free to not participate. Because this case is inapposite to *Sherman*, it is in conflict with the decision of another United States Court of Appeals on the same important matter and thus warrants certiorari review.

The need to reconcile the instant case with *Sherman* is even more critical given the late hour by which this

particular issue was decided by the circuit court below. Since Congress amended the Pledge of Allegiance in 1954, several lower federal courts have entertained Establishment Clause challenges to that legislative act.[5] Notwithstanding previous treatment of this issue by the federal judiciary—including the Seventh Circuit in *Sherman*—the Ninth Circuit recently held that the First Amendment was violated even though Congress originally acted almost a half century ago.[6] Just as *Miranda* warnings have "become part of our national culture," *Dickerson v. United States*, 530 U.S. 428, 443 (2000), this Court should not hesitate to settle the legitimacy of a congressional act which has perhaps become an even more important part of our national tradition after the events that occurred on September 11, 2001.

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[5] For example, a California *district court* long ago dismissed a challenge similar to that presented here in *Smith v. Denney*, 280 F.Supp. 651 (E.D. Cal. 1968).

[6] In rejecting an Establishment Clause challenge to the Ohio state motto "With God All Things are Possible," the Sixth Circuit recently noted that:

> We should also be *amazed* if the Supreme Court were now to question the constitutionality of the Act of June 14, 1954 (68 Stat. 249), codified at [4 U.S.C. § 4]. That is the statute, enacted two years before enactment of Ohio's motto statute, in which Congress, taking a leaf from the Gettysburg Address, amended the Pledge of Allegiance by inserting the phrase "under God" between "one Nation" and "indivisible."

Am. Civil Liberties Union of Ohio v. Capitol Square Review and Advisory Bd., 243 F.3d 289, 301 n.10 (6th Cir. 2001) (*en banc*) (emphasis added).

The decision below by the Ninth Circuit Court of Appeals cannot be a correct result under the First Amendment because "[t]he people of the United States did not adopt the Bill of Rights in order to strip the public square of every last shred of public piety." *Chaudhuri v. Tennessee*, 130 F.3d 232, 236 (6th Cir. 1997), *cert. denied*, 523 U.S. 1024 (1998). The Founders never intended that the Establishment Clause of the First Amendment would be offended, when over a century and a half later, Congress inserted the words "under God" into the Pledge of Allegiance. *See* Pub. L. No. 396, under 68 Stat 249 (1954).

B. State Courts Reviewing Similar Establishment Clause Challenges Have Accommodated the Acknowledgment of God in a Public Setting

A conflict in the federal circuit courts over whether the Pledge of Allegiance can be recited in schools will necessarily undermine well-settled state court jurisprudence which has developed in this and similar contexts.

Shortly after Congress amended the Pledge in 1954, a New York Supreme Court assessed its application in public schools in *Lewis v. Allen*, 159 N.Y.S.2d 807 (1957). An education regulation was amended after Congress acted to include the language of the Pledge verbatim into the regulation and was thus applied in public school patriotic exercises under the predecessor to section 802 of the New York Education Law. *See* App., *infra*, at 25-26.

The issue before the supreme court was whether the Commissioner of Education was under a duty to revoke and rescind the regulation under the Establishment Clause as well as New York State Constitution. The court

noted in passing that "If I properly apprehend the intent, design and purposes of the First Amendment, it was conceived to prevent and prohibit the establishment of a *State Religion*; it was not intended to prevent or prohibit the growth and development of a *Religious State*." *Lewis*, 159 N.Y.S.2d at 812 (emphasis in original).

Petitioner United States cites *Lynch v. Donnelly*, 456 U.S. 668 (1984) as authority for this Court's assurance that the Pledge comports with the strictures of the Establishment Clause, *see* Petition of United States at 14. Likewise, state high courts have also relied on Lynch's assurance. *See, e.g., Maylon v. Pierce County*, 935 P.2d 1272 (Wash. 1997) (counseling program secular in purpose and on its face but occasionally involving some consensual religious activity by unpaid volunteers did not violate the Establishment Clause); *State of Colorado v. Freedom From Religion Found., Inc.*, 898 P.2d 1013 (Colo. 1995) (monument which displayed the Ten Commandments, donated to the state for a secular purpose but contains a message of both religious and secular value, displayed among other monuments and tributes on the grounds of the State Capitol did not violate Establishment Clause); *King v. Vill. of Waunakee*, 517 N.W.2d 671 (Wisc. 1994) (display of a nativity scene in a public park did not violate the Establishment Clause); and *Conrad v. City and County of Denver*, 724 P.2d 1309 (Colo. 1986) (nativity scene displayed annually on the steps of the Denver City and County Building during the Christmas season did not violate state version of the Establishment Clause).

Clarity in the federal Establishment Clause jurisprudence is crucial to state reviewing courts, especially noting

the breadth and depth of exposure by the states due to the role the Pledge plays in their educational systems. *See* Appendix, *infra*. These petitions have poised this important federal question for appropriate guidance to the state courts.

C. This Case Presents a Federal Law Question of Exceptional Importance that Should Be Settled by this Court Because it Broadly and Significantly Impacts the Individual States

Of course, *certiorari* is "not a matter of right," SUP. CT. R. 10. Such review is appropriate where the case "has decided an important question of federal law that has not been, but should be, settled by this Court." SUP. CT. R. 10(c).

How the 1954 version of the Pledge of Allegiance has become eternally woven into the social fabric of Idaho has already been described. However, the Pledge of Allegiance has also been indelibly etched into the fabric of state patriotism education throughout the country. The majority of the states located within the Ninth Circuit, in addition to California and Idaho, have similar statutory requirements for public school patriotism education which includes recitation of the Pledge of Allegiance. See ALASKA STAT. § 14.03.130(a) (Michie 2000) (App., *infra*, at 1-2). ARIZ. REV. STAT. § 15-506 (West 2002) (App., *infra*, at 2). MONT. CODE ANN. § 20-7-133 (2001) (App., *infra*, at 20-21). NEV. REV. STAT. § 389.040 (2002) (App., *infra*, at 21). WASH. REV. CODE § 28A.230.140 (2000) (App., *infra*, at 39-40). *Id.*

Outside of the Ninth Circuit, the importance of a single federal appellate court deciding that the 1954 amendment to the Pledge is unconstitutional becomes more pronounced. Some states, as a testament to the durability of

the language of the Pledge since 1954, and further relying on the authority of Congress to enact constitutional legislation accommodating of the Establishment Clause, have enshrined the full and complete language of the Pledge of Allegiance into their own state law. *See* ALASKA STAT. § 14.03.130(a) (Michie 2000) (App., *infra*, at 1-2). *See also*, Florida, FLA. STAT. ANN. § 1003.44 (West 2002) (App., *infra*, at 5-7); MD. CODE ANN., EDUC. § 7-105(c)(3) (West 2002) (App., *infra*, at 15-16); MISS. CODE ANN. § 37-13-7 (2001) (App., *infra*, at 19); N.J. STAT. ANN. § 18A:36-3(c) (West 1999) (App., *infra*, at 22-23); OKLA. STAT. ANN. tit. 70 § 24-106 (West 2002) (incorporated by reference 4 U.S.C. § 4) (App., *infra*, at 29); R.I. GEN. LAWS 1956 § 16-22-11(a) (2001) (App., *infra*, at 31-32); S.C. CODE ANN. § 59-1-455 (Law. Co-op. 2000) (App., *infra*, at 32), and WASH. REV. CODE § 28A.230140 (2000) (App., *infra*, at 39-40).

The instant decision, without review, will undoubtedly resonate beyond the Ninth Circuit and into the national jurisprudence. Review by the Court will bring certainty and finality to an important legal issue of national import, and, accordingly, the case well meets the criteria for discretionary review by the Court on a writ of certiorari.

CONCLUSION

For the reasons set forth above the Court should grant certiorari on the petitions of the United States and Elk Grove School District.

Respectfully submitted,

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APPENDIX

Alabama

§ 16-43-5. Students to be afforded opportunity to voluntarily recite pledge of allegiance to United States flag.

> The State Board of Education shall afford all students attending public kindergarten, primary and secondary schools the opportunity each school day to voluntarily recite *the pledge of allegiance to the United States Flag*.

ALA. CODE § 16-43-5 (2001) (emphasis added).

Alaska

Sec. 14.03.130 Display of flags and pledge of allegiance.

> (a) United States and Alaska flags shall be displayed upon or near each principal school building during school hours and at other times the governing body considers proper. The governing body shall require that the pledge of allegiance be recited regularly, as determined by the governing body. A person may recite the following salute to the flag of the United States or maintain a respectful silence: *"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."*
>
> (b) A school district shall inform all affected persons at the school of their right not to participate in the pledge of allegiance. The exercise of the right not to participate in the pledge of allegiance may not be used to evaluate a student or employee or for any other purpose.

ALASKA STAT. § 14.03.130(a) (Michie 2000) (emphasis added).

Arizona

15-506. Flag display; recitation of the pledge of allegiance

> School authorities shall purchase a United States flag, flagstaff and appurtenances, display the flag upon or near the school building during school hours and at such other times as they direct and set aside a specific time each day for those students who wish to recite *the pledge of allegiance to the United States flag.*

ARIZ. REV. STAT. ANN. § 15-506 (West 2002) (emphasis added).

Arkansas

6-16-122. American heritage

> a) Local school boards shall allow any teacher or administrator in a public school district of this state to read or post in a public school building, classroom, or event any excerpts or portions of:
>
> (1) The Preamble to the Arkansas Constitution;
>
> (2) The Declaration of Independence;
>
> (3) The United States Constitution;
>
> (4) The Mayflower Compact;
>
> (5) The national motto;
>
> (6) The national anthem;
>
> (7) *The Pledge of Allegiance;*

> (8) The writings, speeches, documents, and proclamations of the founding fathers and Presidents of the United States;
>
> (9) Organic documents from the pre-Colonial, Colonial, Revolutionary, Federalist, and post-Federalist eras;
>
> (10) United States Supreme Court decisions; and
>
> (11) Acts of the United States Congress.
>
> (b) There shall be no content-based censorship of American history or heritage in this state based on religious or other references in these writings, documents, and records.
>
> (c) A copy of this section shall be distributed to the superintendent of each school district in the state by the Department of Education, whereupon the superintendents then shall provide a copy to each teacher and each school board member.

ARK. CODE ANN. § 6-16-122 (Michie 1999) (emphasis added).

California

§ 52720. Daily performance of patriotic exercise in public schools

> In every public elementary school each day during the school year at the beginning of the first regularly scheduled class or activity period at which the majority of the pupils of the school normally begin the school day, there shall be conducted appropriate patriotic exercises. The giving of *the Pledge of Allegiance to the Flag of*

the United States of America shall satisfy the requirements of this section. In every public secondary school there shall be conducted daily appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy such requirement. Such patriotic exercises for secondary schools shall be conducted in accordance with the regulations which shall be adopted by the governing board of the district maintaining the secondary school.

CAL. EDUC. CODE § 52720 (West 1989) (emphasis added).

Connecticut

§ 10-230. Flags in schoolrooms and schools. Policy on the reciting of the "Pledge of Allegiance".

(a) Each local and regional board of education shall provide a United States flag for each schoolroom and shall cause such flag to be displayed therein during each day school is in session. Each such board shall also provide each school with a United States flag of silk or bunting, not less than four feet in length, and a suitable flagstaff or other arrangement whereby such flag may be displayed on the schoolhouse grounds each school day when the weather will permit and on the inside of the schoolhouse on other school days, and renew such flag and apparatus when necessary. If any board of education fails to provide either of the flags or the apparatus as required in this section or to renew any such flag or apparatus when necessary for a period of thirty days after the reception by it of written notice from the State Board of Education that such schoolhouse is not provided with such

flag or apparatus or that such flag or apparatus should be renewed, each member of such board of education who has so received notice shall be fined not more than twenty-five dollars.

. . . (c) Each local and regional board of education shall develop a policy to ensure that time is available each school day for students in the schools under its jurisdiction to recite the *"Pledge of Allegiance"*. The provisions of this subsection shall not be construed to require any person to recite the *"Pledge of Allegiance"*.

CONN. GEN. STAT. ANN. § 10-230(a), (c) (West 2003) (emphasis added).

Delaware

§ 4105 Salute to flag and pledge of allegiance.

In the opening exercises of every free public school each morning, the teachers and pupils assembled shall salute and pledge allegiance to the American flag as follows: *"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all."*

DEL. CODE ANN. tit. 14, § 4105 (1999) (emphasis added).

Florida

1003.44. Patriotic programs; rules

(1) Each district school board may adopt rules to require, in all of the schools of the district, programs of a patriotic nature to encourage

greater respect for the government of the United States and its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state. When the national anthem is played, students and all civilians shall stand at attention, men removing the headdress, except when such headdress is worn for religious purposes. The pledge of allegiance to the flag, "*I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all*," shall be rendered by students standing with the right hand over the heart. The pledge of allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes, as provided by Pub. L. ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377, as amended by Pub. L. ch. 77-806, 56 Stat. 1074, approved December 22, 1942.

(2) Each district school board may allow any teacher or administrator to read, or to post in a public school building or classroom or at any school-related event, any excerpt or portion of the following historic material: the national motto; the national anthem; *the pledge of allegiance*; the Constitution of the State of Florida, including the Preamble; the Constitution of the United States,

including the Preamble; the Bill of Rights; the Declaration of Independence; the Mayflower Compact; the Emancipation Proclamation; the writings, speeches, documents, and proclamations of the presidents of the United States, the signers of the Constitution of the United States and the Declaration of Independence, and civil rights leaders; and decisions of the United States Supreme Court. However, any material that is read, posted, or taught pursuant to this provision may be presented only from a historical perspective and in a nonproselytizing manner. When less than an entire document is used, the excerpt or portion must include as much material as is reasonably necessary to reflect the sentiment of the entire document and avoid expressing statements out of the context in which they were originally made. If the material refers to laws or judicial decisions that have been superseded, the material must be accompanied by a statement indicating that such law or decision is no longer the law of the land. No material shall be selected to advance a particular religious, political, or sectarian purpose. The department shall distribute a copy of this section to each district school board, whereupon each district school superintendent shall distribute a copy to all teachers and administrators.

FLA. STAT. ANN. § 1003.44 (West 2002) (emphasis added).

Georgia

§ 20-2-310. Student directory information; registering to vote and with selective service; pledge of allegiance.

. . .

(c) (1) Each student in the public schools of this state shall be afforded the opportunity to recite the *Pledge of Allegiance to the flag of the United States of America* during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Such policy shall be established in writing and shall be distributed to each teacher within the school.

(2) The State School Superintendent shall prepare for the use of the public schools of this state a program of instruction, subject to the approval of the State Board of Education, in the correct use and display of the flag of the United States of America which shall include, as a minimum, specific instruction regarding respect for such flag and its display and use as provided by federal law and regulation, and under such regulations and instructions as may best meet the varied requirements of the different grades in such schools. However, such instruction shall include, as a minimum, the provisions of 36 U.S.C. Sections 170 through 177.

GA. CODE ANN. § 20-2-310(c) (2001) (emphasis added).

Idaho

33-1602 United States Constitution – National flag and colors – National anthem – "America" – Citizenship.

(1) Instruction in the Constitution of the United States shall be given in all elementary and secondary schools. The state board of education shall adopt such materials as may be deemed necessary for said purpose, and shall also

determine the grades in which such instruction shall be given.

(2) Instruction in the proper use, display and history of and respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include *the pledge of allegiance to the flag*, the words and music of the national anthem, and of "America."

(3) Every school board of trustees shall cause the United States flag to be displayed in every classroom during the school hours of each school day.

(4) Every public school shall offer *the pledge of allegiance* or the national anthem in grades one (1) through twelve (12) at the beginning of each school day.

(5) No pupil shall be compelled, against the pupil's objections or those of the pupil's parent or guardian, to recite *the pledge of allegiance* or to sing the national anthem.

[(6)](3) Instruction in citizenship shall be given in all elementary and secondary schools. Citizenship instruction shall include lessons on the role of a citizen in a constitutional republic, how laws are made, how officials are elected, and the importance of voting and of participating in government. Such instruction shall also include the importance of respecting and obeying statutes which are validly and lawfully enacted by the Idaho legislature and the congress of the United States.

IDAHO CODE § 33-1602 (Michie 2001) (emphasis added).

Illinois

§ 27-3. Patriotism and principles of representative government – Proper use of flag – Method of voting – Pledge of Allegiance.

> American patriotism and the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag, shall be taught in all public schools and other educational institutions supported or maintained in whole or in part by public funds. No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects. Instruction shall be given in all such schools and institutions in the method of voting at elections by means of the Australian Ballot system and the method of the counting of votes for candidates. *The Pledge of Allegiance shall be recited each school day by pupils* in elementary and secondary educational institutions supported or maintained in whole or in part by public funds.

105 ILL. COMP. STAT. ANN. 5/27-3 (West 1998) (emphasis added).

Indiana

20-10.1-4-2.5 Protected writings, documents, and records of American history or heritage

> Sec. 2.5. (a) This section applies to the following writings, documents, and records:
>
> (1) The Constitution of the United States of America.

> (2) The national motto.
>
> (3) The national anthem.
>
> (4) *The Pledge of Allegiance*.
>
> (5) The Constitution of the State of Indiana.
>
> (6) The Declaration of Independence.
>
> (7) The Mayflower Compact.
>
> (8) The Federalist Papers.
>
> (9) "Common Sense" by Thomas Paine.
>
> (10) The writings, speeches, documents, and proclamations of the founding fathers and presidents of the United States.
>
> (11) United States Supreme Court decisions.
>
> (12) Executive orders of presidents of the United States.
>
> (13) Frederick Douglas' Speech at Rochester, New York, on July 5, 1852, entitled "What to a Slave is the Fourth of July?".
>
> (14) *Appeal* by David Walker.
>
> (15) Chief Seattle's letter to the United States government in 1852 in response to the United States government's inquiry regarding the purchase of tribal lands.
>
> (b) A school corporation may allow a principal or teacher in the school corporation to read or post in a school building or classroom or at a school event any excerpt or part of a writing, document, or record listed in subsection (a).
>
> (c) A school corporation may not permit the content based censorship of American history or

heritage based on religious references in a writing, document, or record listed in subsection (a).

(d) A library, a media center, or an equivalent facility that a school corporation maintains for student use must contain in the facility's permanent collection at least one (1) copy of each writing or document listed in subsection (a)(1) through (a)(9).

(e) A school corporation:

(1) must allow a student to include a reference to a writing, document, or record listed in subsection (a) in a report or other work product; and

(2) may not punish the student in any way, including a reduction in grade.

IND. CODE § 20-10.1-4-2.5 (2002 Electronic Pocket Part Update) (emphasis added).

Kansas

72-5308. Patriotic exercises; flag etiquette; observation of holidays.

(a) The state board of education shall prepare for the use of the public schools a program providing for patriotic exercises the board deems to be expedient, under such instructions as may best meet the varied requirements of the different grades in such schools. The program of patriotic observation of every school district shall include:

(1) *A daily recitation of the pledge of allegiance to the flag of the United States of America;*

(2) instructions relating to flag etiquette, use and display; and

(3) provisions relating to the observance in public schools of Lincoln's birthday, Washington's birthday, Memorial day, and Flag day and such other legal holidays designated by law.

(b) The state board of education shall adopt any rules and regulations necessary to implement the provisions of subsection (a).

KAN. STAT. ANN. § 72-5308 (1992) (emphasis added).

Kentucky

158.175 RECITATION OF LORD'S PRAYER AND PLEDGE OF ALLEGIANCE; INSTRUCTION IN PROPER RESPECT FOR AND DISPLAY OF THE FLAG; OBSERVATION OF MOMENT OF SILENCE OR REFLECTION

(1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer *and the pledge of allegiance to the flag* in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that

pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in *the pledge of allegiance to the flag* of the United States at the commencement of each school day.

(3) The Kentucky Board of Education shall develop a program of instruction relating to the flag of the United States of America, including instruction in etiquette, the correct use and display of the flag, and other patriotic exercises as may be related. This program of instruction shall be provided to each public school for use in its course of instruction. The program of instruction, at a minimum, shall include the provisions of 4 U.S.C. secs. 1 to 3 and 4 U.S.C. secs. 5 to 9.

KY. REV. STAT. ANN. § 158.175(1)-(3) (Michie 2001) (emphasis added).

Louisiana

§ 2115. Silent prayer or meditation; pledge of allegiance

> A. Each parish, city, and other local public school board in the state shall permit the proper school authorities of each school within its jurisdiction to allow an opportunity, at the start of each school day, for those students and teachers desiring to do so to observe a brief time in silent prayer or meditation. The allowance of a brief time for silent prayer or meditation shall not be intended nor interpreted as state support of or interference with religion, nor shall such time

> allowance be promoted as a religious exercise and the implementation of this Section shall remain neutral toward religion.
>
> B. Each parish and city school board in the state shall also permit the proper authorities of each school to allow the opportunity for group recitation of the *"Pledge of Allegiance to the Flag"*. Such recitation shall occur at the commencement of the first class of each day in all grades and in all public schools.

LA. REV. STAT. ANN. § 17:2115 (West 2001) (emphasis added).

Maryland

§ 7-105. Patriotic observances

> (a) This section is enacted so that the love of freedom and democracy, shown in the devotion of all true and patriotic Americans to their flag and country, shall be instilled in the hearts and minds of the youth of America.
>
> (b) Each county board shall:
>
> (1) Require the display of an American flag on the site of each public school building in its county while the school is in session;
>
> (2) Buy all necessary flags, staffs, and appliances for the flags; and
>
> (3) Adopt rules and regulations for the proper custody, care, and display of the flag.
>
> (c) Each county board shall:
>
> (1) Provide each public school classroom with an American flag;

(2) Prepare a program for each public school classroom for the beginning of each school day that provides for the salute to the flag and other patriotic exercises that are approved by the United States government; and

(3) Require all students and teachers in charge to stand and face the flag and while standing give an approved salute and recite in unison the pledge of allegiance as follows: "*I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.*"

(d) Any student or teacher who wishes to be excused from the requirements of subsection (c)(3) of this section shall be excused.

(e) Each county board may provide for any other patriotic exercises it considers appropriate under the regulations and instruction that best meet the requirements of the different grades in the schools.

(f) Any individual who commits an act of disrespect, either by word or action, is in violation of the intent of this section.

MD. CODE ANN., EDUC. § 7-105 (2002) (emphasis added).

Massachusetts

§ 69. Display of national flags; pledge of allegiance; penalty for violation

The school committee shall provide for each schoolhouse under its control, which is not

otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display as hereinafter provided. A flag shall be displayed, weather permitting, on the school building or grounds on every school day and on every legal holiday or day proclaimed by the governor or the President of the United States for especial observance; provided, that on stormy school days, it shall be displayed inside the building. A flag shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of *the "Pledge of Allegiance to the Flag"*. A flag shall be displayed in each classroom in each such schoolhouse. Failure for a period of five consecutive days by the principal or teacher in charge of a school equipped as aforesaid to display the flag as above required, or failure for a period of two consecutive weeks by a teacher to salute the flag and recite said pledge as aforesaid, or to cause the pupils under his charge so to do, shall be punished for every such period by a fine of not more than five dollars. Failure of the committee to equip a school as herein provided shall subject the members thereof to a like penalty.

MASS. GEN. LAWS ch. 71 § 69 (Law. Co-op. Supp. 2000) (emphasis added).

Minnesota

PLEDGE OF ALLEGIANCE. (a) All public and charter school students shall recite *the pledge of allegiance to the flag of the United States of America* one or more times each week. The recitation shall be conducted:

(1) by each individual classroom teacher or the teacher's surrogate; or

(2) over a school intercom system by a person designated by the school principal or other person having administrative control over the school.

A local school board or a charter school board of directors may annually, by majority vote, waive this requirement.

(b) Any student or teacher may decline to participate in recitation of the pledge.

(c) A school district or charter school that has a student handbook or school policy guide must include a statement that anyone who does not wish to participate in reciting the pledge of allegiance for any personal reasons may elect not to do so and that students must respect another person's right to make that choice.

(d) A local school board or a charter school board of directors that waives the requirement to recite the pledge of allegiance under paragraph (a) may adopt a district or school policy regarding the reciting of the pledge of allegiance.

MINN. STAT. § 121A.11(3) (2003) (emphasis added).

Mississippi

§ 37-13-6. United States flag; classroom display; etiquette instruction; recitation of pledge of allegiance

(1) The flag of the United States shall be displayed in close proximity to the school building, on a proper staff, at all times during the hours of daylight when the school is in session when the weather will permit without damage to the flag. In addition, the flag of the United States shall be displayed in each classroom and in each principal room of the school building at all times while school is in session. It shall be the duty of the school boards of each school district to provide for the flags, proper flag staffs and their proper display. Each school district shall provide student instruction in the proper etiquette toward, correct display of, and respect for the flag, and in patriotic exercises. The instruction shall be a part of the district's fifth grade social studies curriculum or history curriculum, with the assistance of the State Department of Education.

(2) From and after July 1, 2002, the school boards of all public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at the beginning of the first hour of class each day school is in session, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Any student or teacher who objects to reciting the oath of allegiance shall be excused from participating without penalty.

MISS. CODE ANN. § 37-13-6 (2002) (emphasis added).

Missouri

171.021. Schools receiving public moneys to display United States flag – requirement to recite Pledge of Allegiance once a week – students not required to recite

> 1. Every school in this state which is supported in whole or in part by public moneys, during the hours while school is in session, shall display in some prominent place either upon the outside of the school building or upon a pole erected in the school yard the flag of the United States of America.
>
> 2. Every school in this state which is supported in whole or in part by public moneys shall ensure that *the Pledge of Allegiance to the flag of the United States of America* is recited in at least one scheduled class of every pupil enrolled in that school no less often than once per week. No student shall be required to recite the Pledge of Allegiance.

MO. REV. STAT. § 171.021 (Supp. 2002) (emphasis added).

Montana

20-7-133. Pledge of allegiance required – exemption for students and teachers

> (1) Except as provided in subsection (4), *the pledge of allegiance to the flag of the United States of America* must be recited in all public schools of the state.
>
> (2) The recitation required in subsection (1) must be conducted at the beginning of the first class:
>
> (a) of each school day in kindergarten through grade 6; and

> (b) of each school week in grades 7 through 12.
>
> (3) The recitation must be conducted:
>
> (a) by each individual classroom teacher or the teacher's surrogate; or
>
> (b) over the school intercom system by a faculty member or person designated by the principal.
>
> (4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.
>
> (5) If a student or teacher declines to participate in the recitation of the pledge pursuant to this section, a school district may not for evaluation purposes include any reference to the student's or teacher's not participating.

MONT. CODE ANN. § 20-7-133 (2001) (emphasis added).

Nevada

389.040. Patriotic observance

> Each public school shall set aside appropriate time at the beginning of each school day for pupils to *pledge their allegiance to the flag of the United States*. In addition, each public school may set aside appropriate time during the school day for additional patriotic observance.

NEV. REV. STAT. 389.040 (2002) (emphasis added).

New Hampshire

194:15-c New Hampshire School Patriot Act.

> I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.
>
> II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.
>
> III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

N.H. REV. STAT. ANN. § 194:15-c (Supp. 2002) (emphasis added).

New Jersey

18A:36-3. Display of and salute to flag; pledge of allegiance

> Every board of education shall:
>
> (a) Procure a United States flag, flagstaff and necessary appliances therefore for each school in the district and display such flag upon or near the public school building during school hours;
>
> (b) Procure a United States flag, flagstaff and necessary appliances or standard therefor for each assembly room and each classroom in each

> school, and display such flag in the assembly room and each classroom during school hours and at such other time as the board of education may deem proper; and
>
> (c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag: "*I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all*," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.

N.J. STAT. ANN. § 18A:36-3(c) (West 1999) (emphasis added).

New Mexico

22-5-4.5 Pledge of allegiance.

> Local school boards shall provide that *the pledge of allegiance* shall be recited daily in each public school in the school district according to regulations adopted by the state board.

N.M. STAT. ANN. § 22-5-4.5 (Michie 2001) (emphasis added).

New York

§ 802. Instruction relating to the flag; holidays

1. It shall be the duty of the commissioner to prepare, for the use of the public schools of the state, a program providing for a salute to the flag and a daily *pledge of allegiance to the flag*, and instruction in its correct use and display which shall include, as a minimum, specific instruction regarding respect for the flag of the United States of America, its display and use as provided by federal statute and regulation and such other patriotic exercises as may be deemed by him to be expedient, under such regulations and instructions as may best meet the varied requirements of the different grades in such schools. However, such instruction shall include, as a minimum, the provisions of sections one hundred seventy through one hundred seventy-seven of title thirty-six of the United States Code.

2. It shall also be his duty to make special provision for the observance in the public schools of Lincoln's birthday, Washington's birthday, Memorial day and Flag day, and such other legal holidays of like character as may be hereafter designated by law when the legislature makes an appropriation therefore.

3. Nothing herein contained shall be construed to authorize military instruction or drill in the public schools during school hours, except that the board of education of any school district may offer during school hours a junior reserve officer training program in conjunction with the United States Department of Defense to those students in grades nine through twelve who are at least

fourteen years of age provided that enrollment and participation in such program is voluntary on the part of the student and written consent of a parent or guardian is submitted by such student and further provided, that the conduct of instruction on or the presence within any school of any type of current or future weaponry as part of such program is prohibited.

N.Y. EDUC. LAW § 802 (McKinney 2000) (emphasis added).

North Carolina

§ 115C-47. Powers and duties generally

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(1) To Provide an Adequate School System. – It shall be the duty of local boards of education to provide adequate school systems within their respective local . . . school administrative units, as directed by law.

. . . (29) To Authorize the Observance of a Moment of Silence. – To afford students and teachers a moment of quiet reflection at the beginning of each day in the public schools, to create a boundary between school time and nonschool time, and to set a tone of decorum in the classroom that will be conducive to discipline and learning, each local board of education may adopt a policy to authorize the observance of a moment of silence at the commencement of the first class of each day in all grades in the public schools. Such a policy shall provide that the teacher in charge of the room in which each class is held may announce that a period of silence not to

exceed one minute in duration shall be observed and that during that period silence shall be maintained and no one may engage in any other activities. Such period of silence shall be totally and completely unstructured and free of guidance or influence of any kind from any sources.

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. – Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite *the Pledge* or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

(29b) To Ensure Freedom of Religion. – No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis, except when necessary to maintain order and discipline. No local board of education shall encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools. This subdivision shall not be construed to direct any local board of education to take any action in violation of the Constitutions of North Carolina or the United States.

N.C. GEN. STAT. § 115C-47(1), (29)-(29b) (2002) (emphasis added).

North Dakota

15.1-19-03.1 Recitation of prayer – Period of silence – Pledge of allegiance.

> 1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the schoolday to the same extent a student may voluntarily speak or participate in secular speech.
>
> 2. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
>
> 3. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each school day. 4. A school board may authorize the voluntary recitation of the *pledge of allegiance* by a teacher or one or more students at the beginning of each schoolday. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

N.D. CENT. CODE § 15.1-19-03.1 (Supp. 2001) (emphasis added).

Ohio

3313.602 POLICY ON ORAL RECITATION OF PLEDGE OF ALLEGIANCE TO FLAG; EMPHASIS ON DEMOCRATIC AND ETHICAL PRINCIPLES; VETERANS' DAY OBSERVANCE

(A) The board of education of each city, local, exempted village, and joint vocational school district shall adopt a policy specifying whether or not oral recitation of *the pledge of allegiance to the flag* shall be a part of the school's program and, if so, establishing a time and manner for the recitation. The policy adopted under this division shall not require any student to participate in the recitation and shall prohibit the intimidation of any student by other students or staff aimed at coercing participation.

(B) In the development of its graded course of study, the board of education of each city and exempted village school district and the governing board of each educational service center shall ensure that the principles of democracy and ethics are emphasized and discussed wherever appropriate in all parts of the curriculum for grades kindergarten through twelve.

(C) Each city, local, exempted village, and joint vocational school board shall adopt policies that encourage all certificated and noncertificated employees to be cognizant of their roles in instilling ethical principles and democratic ideals in all district pupils.

OHIO REV. CODE ANN. § 3313.602(A)-(C) (West Supp. 2002) (emphasis added).

Oklahoma

§ 24-106. United States flag – Display – Instruction in history and etiquette – Pledge of allegiance

A. The board of education of every school district in this state shall be required to own and display, either inside or outside each classroom building in the district, a United States Flag.

B. Instruction in the history and etiquette relating to the United States Flag shall be given in one or more grades in the schools in every school district in this state.

C. Students are authorized to recite, at the beginning of each school day, the *pledge of allegiance to the flag of the United States of America* as enumerated at 36 U.S.C., Section 172. Each student shall be informed by posting a notice in a conspicuous place that students not wishing to participate in the pledge shall not be required to do so.

OKLA. STAT. ANN. tit. 70, § 24-106 (West 2002) (emphasis added).

Pennsylvania

§ 7-771. Display of United States flag; development of patriotism

(a) The board of school directors in each district shall, when they are not otherwise provided, purchase a United States flag, flagstaff, and the necessary appliances therefor, and shall display said flag upon or near each public school building in clement weather, during school hours, and at such other times as the board may determine.

(b) All boards of school directors, all proprietors or principals of private schools, and all authorities in control of parochial schools or other educational institutions, shall display the United States national flag, not less than three feet in length, within all school buildings under their control during each day such schools are in session. In all public schools, the board of school directors shall make all rules and necessary regulations for the care and keeping of such flags. The expense thereof shall be paid by the school district.

(c) (1) All supervising officers and teachers in charge of public, private or parochial schools shall cause the Flag of the United States of America to be displayed in every classroom during the hours of each school day and *shall provide for the recitation of the Pledge of Allegiance* or the national anthem at the beginning of each school day. Students may decline to recite the Pledge of Allegiance and may refrain from saluting the flag on the basis of religious conviction or personal belief. The supervising officer of a school subject to the requirements of this subsection shall provide written notification to the parents or guardian of any student who declines to recite the Pledge of Allegiance or who refrains from saluting the flag.

(2) This subsection shall not apply to any private or parochial school for which the display of the flag, the recitation of the Pledge of Allegiance or the salute of the flag violates the religious conviction on which the school is based.

(d) The supervising officers and teachers in charge of public, private or parochial schools may offer at least one full period per week, for the

purpose of affirming and developing allegiance to and respect for the Flag of the United States of America, and for the promoting of a clear understanding of our American way of life, with all of the unparalleled individual opportunities, and our republican form of government, with its responsiveness to majority decisions and demands. Such elements shall be included in this program as instruction in the fundamental principles of our form of government, an understanding of the provisions of the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America, the values to be found in the freedom of speech, of religion and of the press, the values to be found in obedience to the laws of the land and the Commonwealth, the importance of exercising the right of franchise, the obligation of every citizen to stand ready to defend our country at all times from infiltration or aggression by those whose acts and ideologies are contrary to our American philosophy of life.

7 PA. CONS. STAT. ANN. § 771 (West 1992) (emphasis added).

Rhode Island

16-22-11 Pledge of allegiance.

(a) All public schools, commencing with pre-primary school through and including high school, shall commence each day with the following pledge:

"*I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.*"

(b) Any person not wishing to participate in the "pledge of allegiance" is exempt from participation and need not participate in the pledge.

R.I. GEN. LAWS § 16-22-11 (2002) (emphasis added).

South Carolina

§ 59-1-455. Time for pledge of allegiance required.

Beginning with the 1991-92 school year, all public school students, commencing with grades kindergarten through and including high school, shall during the course of each school day's activities at a specific time which must be designated by the local school say the Pledge of Allegiance as follows:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Any person not wishing to say the "Pledge of Allegiance" or otherwise participate in saying the "Pledge of Allegiance" is exempt from participation and may not be penalized for failing to participate.

A person who does not wish to participate may leave the classroom, may remain in his seat, or may express his nonparticipation in any form which does not materially infringe upon the rights of other persons or disrupt school activities.

S.C. CODE ANN. § 59-1-455 (Law. Co-op. 2000) (emphasis added).

South Dakota

13-24-17.2 Right to post flag, recite pledge of allegiance and sing national anthem not to be infringed.

The right to post the United States flag shall not be limited or infringed upon in any public school classroom, public school building, at any public school event, or on any public school uniform. The right to recite the *pledge of allegiance to the flag of the United States* shall not be limited or infringed upon, and the national anthem may be sung during any school day or school event.

S.D. CODIFIED LAWS § 13-24-17.2 (Michie 2002) (added by S.L. 2002, ch. 87, § 1) (emphasis added).

Tennessee

§ 49-6-1001. American flag and emblems

(a) All boards of education shall direct and all teachers employed by the public schools shall give instructions to the pupils of the schools, and shall have the pupils study as a part of the curriculum, the uses, purposes and methods of displaying the American flag and other patriotic emblems, and the history and usage of the *pledge of allegiance to the flag of the United States of America*.

(b) In recognition of the civic heritage of the United States of America, all students shall be required to learn the *pledge of allegiance* and to demonstrate such knowledge.

(c)(1) Each board of education shall require the daily recitation of the pledge of allegiance in each classroom in the school system in which a flag is

displayed. Each LEA is encouraged to have a flag in each classroom and patriotic, fraternal, and other organizations or individuals are encouraged to donate flags to schools to enable them to have the flag of the United States of America present in each classroom. Each board of education shall determine the appropriate time during the school day for the recitation of the *pledge of allegiance*. At the time designated for the recitation of the pledge of allegiance, students shall stand and recite the pledge of allegiance while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; provided, however, that no student shall be compelled to recite the pledge of allegiance if the student or the student's parent or legal guardian objects on religious, philosophical or other grounds to the student participating in such exercise. Students who are thus exempt from reciting the pledge of allegiance shall remain quietly standing or sitting at their desks while others recite the pledge of allegiance and shall make no display that disrupts or distracts others who are reciting the pledge of allegiance. Teachers or other school staff who have religious, philosophical, or other grounds for objecting are likewise exempt from leading or participating in the exercise. If a teacher chooses not to lead the pledge, another suitable person shall be designated either by the teacher or principal to lead the class. Each board of education shall provide appropriate accommodations for students, teachers or other staff who are unable to comply with the procedures described herein due to disability.

(2) The board of education's code of conduct shall apply to disruptive behavior during the recitation of the *pledge of allegiance* in the same

manner as provided for other circumstances of such behavior.

(d)(1) To promote compliance with constitutional restrictions, as well as observance of constitutional rights, the State Board of Education shall, in consultation with the Attorney General and Reporter, develop guidelines on constitutional rights and restrictions relating to the recitation of the *pledge of allegiance to the American flag* in public schools.

(2) The State Board of Education's guidelines shall include, but shall not be limited to, provisions which address the following: the initiative and involvement of local boards of education and individual schools, administrators, teachers, and students; the propriety and constitutionality of any recitation or participation requirements; appropriate etiquette and conventions for respecting the dignity and appropriate display of the flag of the United States; and relevant state and federal constitutional concerns, such as freedom of speech and religion.

TENN. CODE ANN. § 49-6-1001 (2002) (emphasis added).

Texas

Sec. 25.082. SCHOOL DAY; PLEDGES OF ALLEGIANCE; MINUTE OF SILENCE.

. . .

(b) The board of trustees of each school district shall require students, once during each school day at each school in the district, to recite:

(1) *the pledge of allegiance to the United States flag in accordance with 4 U.S.C. Section 4, and its subsequent amendments*; and

(2) the pledge of allegiance to the state flag in accordance with Subchapter C, Chapter 3100, Government Code.

(c) On written request from a student's parent or guardian, a school district shall excuse the student from reciting a pledge of allegiance under Subsection (b).

(d) The board of trustees of each school district shall provide for the observance of one minute of silence at each school in the district following the recitation of the pledges of allegiance to the United States and Texas flags under Subsection (b). During the one-minute period, each student may, as the student chooses, reflect, pray, meditate, or engage in any other silent activity that is not likely to interfere with or distract another student. Each teacher or other school employee in charge of students during that period shall ensure that each of those students remains silent and does not act in a manner that is likely to interfere with or distract another student.

TEX. EDUC. CODE ANN. § 25.082 (Vernon 2003) (emphasis added).

Utah

53A-13-101.6 Instruction on the flag of the United States of America.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State

Board of Education shall provide by rule for a program of instruction within the public schools relating to the flag of the United States.

(2) The instruction shall include the history of the flag, etiquette, customs pertaining to the display and use of the flag, and other patriotic exercises as provided by Sections 36 U.S.C. 170 to 177.

(3) (a) The pledge of allegiance to the flag shall be recited: (i) at the beginning of the day in each elementary public school in the state; and (ii) once a week at the beginning of a school day in each public secondary school in the state.

(b) Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge.

(c) A student shall be excused from reciting the pledge upon written request from the student's parent or legal guardian.

UTAH CODE ANN. § 53A-13-101.6 (2003) (emphasis added).

Virginia

§ 22.1-202. Instruction in history and principles of flags of United States and Virginia; pledge of allegiance to American flag; guidelines developed by the Board

A. Instruction in the history and principles of the flag of the United States and the flag of the Commonwealth shall be given in one or more grades in every school division. The instruction shall include the *pledge of allegiance* and the appropriate etiquette and conventions for

respecting the dignity and appropriate display of such flags.

In recognition of the civic heritage of the United States of America, all students shall be required to learn the *Pledge of Allegiance* and to demonstrate such knowledge.

B. To promote compliance with constitutional restrictions as well as observance of constitutional rights, the Board of Education shall, in consultation with the Office of the Attorney General, develop guidelines on constitutional rights and restrictions relating to the recitation of the *pledge of allegiance to the American flag* in public schools.

The Board's guidelines shall include, but shall not be limited to, provisions which address the following: the initiative and involvement of local school boards, individual schools, administrators, teachers, and students; the propriety and constitutionality of any recitation or participation requirements; appropriate etiquette and conventions for respecting the dignity and appropriate display of the flag of the United States and the flag of the Commonwealth; and relevant state and federal constitutional concerns, such as freedom of speech and religion. . . .

C. Each school board shall require the daily recitation of *the Pledge of Allegiance* in each classroom of the school division and shall ensure that the flag of the United States is in place in each such classroom. Each school board shall determine the appropriate time during the school day for the recitation of the Pledge. During such Pledge of Allegiance, students shall stand and recite the Pledge while facing the flag with their

right hands over their hearts or in an appropriate salute if in uniform; however, no student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desks while others recite the Pledge and shall make no display that disrupts or distracts others who are reciting the Pledge. School boards shall provide appropriate accommodations for students who are unable to comply with the procedures described herein due to disability.

VA. CODE ANN. § 22.1-202 (Michie Supp. 2002) (emphasis added).

Washington

28A.230.140. United States flag – Procurement, display, exercises – National anthem

> The board of directors of every school district shall cause a United States flag being in good condition to be displayed during school hours upon or near every public school plant, except during inclement weather. They shall cause appropriate flag exercises to be held in each classroom at the beginning of the school day, and in every school at the opening of all school assemblies, at which exercises those pupils so desiring shall recite the following salute to the flag: "*I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all*". Students not reciting the pledge shall maintain a respectful silence. The salute to the flag or the national anthem

shall be rendered immediately preceding interschool events when feasible.

WASH. REV. CODE § 28A.230.140 (2000) (emphasis added).

West Virginia

§ 18-5-15b. Pledge of allegiance to the flag

Every instructional day in the public schools of this state shall be commenced *with a pledge of allegiance to the flag of the United States*. Pupils who do not wish to participate in this exercise shall be excused from making such pledge.

W.VA. CODE § 18-5-15b (1999) (emphasis added).

Wisconsin

118.06. Flag, pledge of allegiance, and national anthem

(1) Every school board and the governing body of every private school shall cause the U.S. flag to be displayed in the schoolroom or from a flagstaff on each school ground during the school hours of each school day.

(2) Every public school shall offer the *pledge of allegiance* or the national anthem in grades one to 12 each school day. Every private school shall offer *the pledge of allegiance* or the national anthem in grades one to 12 each school day unless the governing body of the private school determines that the requirement conflicts with the school's religious doctrines. No pupil may be compelled, against the pupil's objections or those

of the pupil's parents or guardian, to recite the pledge or to sing the anthem.

WIS. STAT. ANN. § 118.06 (West Supp. 2002 Electronic Update) (emphasis added).